



## **MERIT SYSTEMS PROTECTION BOARD**

### **Agency Information Collection Activities; Emergency Reinstatement of Previously Approved Collection**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice of emergency reinstatement.

**SUMMARY:** The Merit Systems Protection Board (MSPB) is requesting approval from the Office of Management and Budget (OMB) to reinstate Information Collection Request (ICR) 3124-0009, E-Appeal/US Merit Systems Protection Board Appeal Form which expired on March 31, 2012. This ICR is necessary for individuals who file appeals with MSPB. The form serves as a guide to appellants in providing all needed information. The MSPB is requesting Emergency Reinstatement approval from OMB by November 9, 2012. The MSPB Appeal Form (Form 185) has been revised. At this time, MSPB is requesting public comments on Form 185, which is available for review on MSPB's website at <http://www.mspb.gov>.

**DATES:** Written comments must be received on or before November 5, 2012.

**ADDRESSES:** Submit comments on the collection of information to the Office of Management and Budget, Attn: Desk Officer for MSPB, via fax at 202-395-6974 or e-mail at

[OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Please contact William D. Spencer, Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419; telephone 202-653-7200; fax 202-653-7130; or e-mail [mspb@mspb.gov](mailto:mspb@mspb.gov). Persons without internet access may request a paper copy of the MSPB Appeal Form from the Office of the Clerk of the Board.

### **Revised MSPB Appeal Form 185**

The instructions at the beginning of the written appeal form have been streamlined and reorganized, with a focus on more clearly setting forth the Board's review authority; the option to file an appeal electronically; the time limits for filing an appeal; and where to file an appeal. In addition, the Privacy Act Statement and Public Reporting Burden notice have been moved to the end of the form.

Part 1 – Appellant and Agency Information: This section remains largely unchanged, apart from the inclusion of some updated language (such as “cell” under telephone numbers in box 3). In box 11, “Hearing,” the sentence, “If you choose to have a hearing, the administrative judge will notify you when and where it is to be held[,]” has been eliminated, due to its potentially misleading character (the right to a hearing is conditional on a finding of jurisdiction). The appellant's certification that “all of the statements made in this form and any attachments are

true, complete, and accurate...” has been moved from box 12, to its own section at the end of the form.

Part 2 – Agency Personnel Action or Decision (non-retirement): The introductory language to this section has been altered, reflecting the following change in the overall organization of the form: whereas the current version solicits information about non-retirement actions in this part and then subsequently cites to affirmative defenses to such actions and particular classes of such actions (IRA, USERRA, and VEOA) in two separate sections, the revised form addresses all non-retirement actions and associated claims in Part 2. The present Part 4, which invites appellants to check boxes next to various affirmative defense claims, a frequent source of confusion, has been eliminated. Information regarding such claims, along with the descriptions of IRA, USERRA, and VEOA appeals, currently contained in Part 5, has been placed together in a new Appendix A and referenced at the beginning of this revised section, which provides as follows:

Complete this part if you are appealing a Federal agency personnel action or decision other than a decision addressing your retirement rights or benefits. Certain actions that might not otherwise be appealable to the Board may be challenged as an individual right of action (IRA) appeal under the Whistleblower Protection Act (WPA) or as an appeal under the Uniformed Services Employment and Reemployment Rights Act (USERRA) or the Veterans Employment Opportunities Act (VEOA). An explanation of these three types of appeals is provided in Appendix A.....

and in the new box 16, which provides as follows:

Explain briefly why you think the agency was wrong in taking this action. In challenging such an action, you may choose to allege that the agency engaged in harmful procedural error, committed a prohibited practice, or engaged in one of the other claims listed in Appendix A. Attach the agency's proposal letter, decision letter, and SF-50, if available. Attach additional sheets if necessary (bearing in mind that there will be later opportunities to supplement your filings).

As a result of this change, current boxes 13a, 14, 15, 16, 17, and 18 have been replaced with revised boxes 13, 14, 15, and 16. Current box 19, asking the appellant "[w]hat action would you like the Board to take in this case [,]" has been eliminated, as superfluous. Moreover, the language of current box 20 (revised box 17), has been changed to eliminate the request for information about the agency against which any negotiated grievance has been filed (as this agency will almost certainly be the same as the one having taken the personnel action itself). Finally, revised boxes 18 and 19, requesting information related to exhaustion of remedies in IRA and USERRA/VEOA appeals, respectively, replace current boxes 31, 32, and 33.

Part 3 – OPM or Agency Retirement Decision: This section remains largely unchanged. Current boxes 26 and 27, requesting information regarding if and when a final retirement decision has been received, have been consolidated into revised box 24. Current box 29, asking the appellant "[w]hat action would you like the Board to take in this case[,]" has been eliminated, as superfluous.

Part 4 – Designation of Representative: As previously noted, the current Part 4, soliciting information about affirmative defenses, has been eliminated. The revised Part 4 replaces the current Part 6, with some slight changes in language.

Part 5 – Certification: As previously noted, the current Part 5, providing information about IRA, USERRA, and VEOA appeals, has been eliminated. The revised Part 5 contains the appellant certification, presently included in Part 1 of the form, along with the Privacy Act Statement and Public Reporting Burden.

Appendix A and B: As previously noted, Appendix A provides information regarding affirmative defenses and IRA, USERRA, and VEOA appeals, as well as the special time limits for filing such appeals, making this material available to those to whom it applies, while otherwise streamlining and simplifying the appeal form itself. Appendix B provides full contact information for each of the Board’s regional offices, together with their corresponding geographic areas.

### **Estimated Reporting Burden**

In accordance with the requirements of the Paperwork Reduction Act of 1995, MSPB is soliciting comments on the public reporting burden for this information collection. The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form and instructions, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information.

Specifically, MSPB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MSPB’s functions, including whether the information will have practical utility; (2) the accuracy of MSPB’s estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways

to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

ESTIMATED ANNUAL REPORTING BURDEN					
5 CFR Parts	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201, 1208, and 1209.....	7,150	1	7,150	1.0	7,150

Signed:

William D. Spencer,

Clerk of the Board

[Billing Code 7400-01-P]

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